

REMARKS

Claims 1-20 are pending in the application. Claims 1-20 currently stand rejected. Claims 1, 8, 11, and 18 are hereby amended. Claims 7 and 17 are canceled. The Applicant respectfully requests consideration of the following remarks and allowance of the claims.

35 U.S.C. § 102(e) Rejections

Claims 1-2, 5, 9, 11-12, 15, and 19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,006,536 (Somashekhar). Claims 1-2, 5, 9, 11-12, 15, and 19 also stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,169,754 (Sugawara). Claims 1-2, 5-6, 9-12, 15-16, and 19-20 also stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0103926 (Cook). The Applicant has traversed the rejections by amending independent claims 1 and 11 to include the limitations of claims 7 and 17 respectively. Therefore, the rejections under 35 U.S.C. § 102(e) should be withdrawn. A discussion of amended claims 1 and 11 follows below with respect to the rejection under 35 U.S.C. § 103(a).

35 U.S.C. § 103(a) Rejections

Claims 3-4, 7-8, 10, 13-14, 16-18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,006,536 (Somashekhar), in view of U.S. Patent No. 6,169,754 (Sugawara), and in further view of Official Notice. Claims 3-4, 7-8, 13-14, and 17-18 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0103926 (Cook), in further view of Official Notice. The Applicant respectfully traverses the rejections for at least the following reasons.

Claims 1 and 11 have been amended to include all of the limitations of claim 7 and 17 respectfully. Therefore, the rejection of claim 7 and 17 will be discussed with regard to amended claims 1 and 11 as follows.

Regarding the rejection of claim 7 over Somashekhar and Sugawara and in view of Official Notice, the Office Action admits that, separately and in combination, the

references fail to teach transferring the first section overhead, the first line overhead, the path overhead, and the user data in parallel over multiple optical wavelengths, as now required by amended claim 1. (Please see the recent Office Action at page 5, last paragraph.) The Office Action then takes Official Notice that “*conveying a SONET signal in a single wavelength or in a plurality of parallel wavelengths are well known and expected in the art at the time the invention was made.*” (Please see the recent Office Action at page 6, lines 3-5.) However, the Office Action fails to make a *prima facie* case of obviousness as the combination of Somashekhar and Sugawara with the facts asserted by Official Notice to be well known still fails to teach or suggestion all of the limitations of claim 1. Even if the rejection were proper, improper hindsight reasoning is applied to render claim 1 obvious over Somashekhar and Sugawara in view of the facts taken by Official Notice. In addition, the use of Official Notice in this instance is improper. Therefore, the rejection should be withdrawn accordingly.

Claim 1 requires receiving over a *single* optical wavelength a first SONET signal that includes a first section overhead, a first line overhead, path overhead, and user data. Claim 1 further requires transferring the *same* first section overhead, first line overhead, path overhead, and user data *in parallel over multiple optical wavelengths*. The recent Office Action states that “*conveying a SONET signal in a single wavelength or in a plurality of parallel wavelengths are well known and expected in the art at the time the invention was made.*” However, the Office Action does not take Official Notice that transferring *in parallel over multiple optical wavelengths* the *same* first section overhead, first line overhead, path overhead, and user data that was received over a single optical wavelength. Therefore, the combination of Somashekhar and Sugawara with the facts asserted by Official Notice to be well known still fails to teach or suggest all of the limitations of claim 1 and the rejection should be withdrawn accordingly.

Even if the rejection could be considered proper, it would be improper hindsight reasoning to equate *conveying a SONET signal in a single wavelength or in a plurality of parallel wavelengths* with receiving over a *single* optical wavelength a first SONET signal that includes a first section overhead, a first line overhead, path overhead, and user data, and transferring the *same* first section overhead, first line overhead, path overhead, and user data *in parallel over multiple optical wavelengths*, as required by claim 1.

Rather, conveying a SONET signal in a plurality of parallel wavelengths is not the same as transferring first section overhead, first line overhead, path overhead, and user data in parallel over multiple optical wavelengths.

Regardless, MPEP § 2144.03 states that “[o]fficial notice *unsupported by documentary evidence* should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable demonstration as being well known*.” (Emphasis added.) For the sake of argument, while transferring multiple SONET signals in parallel over multiple optical wavelengths may be well known, transferring the first section overhead, the first line overhead, the path overhead, and the user data in parallel over multiple wavelengths is not something that is capable of instant and unquestionable demonstration as being well known under MPEP § 2144.03. The use of Official Notice in this instance is therefore improper and the rejection should be withdrawn accordingly.

Regarding the rejection of the claim 7 over Cook in view of Official Notice, the Office Action admits that Cook fails to teach transferring the first section overhead, the first line overhead, the path overhead, and the user data in parallel over multiple optical wavelengths, as now required by amended claim 1. (Please see the recent Office Action at page 7, first full paragraph.) However, as with the rejection of the claims over Somashekhar and Sugawara, the Office Action takes Official Notice that “*conveying a SONET signal in a single wavelength or in a plurality of parallel wavelengths are well known and expected in the art at the time the invention was made*.” (Please see the recent Office Action at page 7, first full paragraph.) The Applicant asserts that the discussion above regarding the rejection of the claims over Somashekhar and Sugawara applies as well to the rejection of the claims over Cook. The rejection should be withdrawn accordingly.

Based on the foregoing comments, the Applicant contends that claim 1 is allowable, and such indication is respectfully requested. Claim 11 contains limitations similar to claim 1 and is therefore allowable over the art of record for the same reasons as claim 1.

While separately allowable over the art of record, dependent claims 2-6, 8-10, 12-16, and 18-20 depend from otherwise allowable independent claims. The Applicant

therefore refrains from a discussion of the rejection of claims 2-6, 8-10, 12-16, and 18-20 under 35 U.S.C. § 103(a) for the sake of brevity.

CONCLUSION

Based on the above remarks, the Applicant submits that the claims in their present form are allowable. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims.

Included herewith is payment for the appropriate fee under 37 C.F.R. § 1.17(a)(1) for a one-month extension of time (37 C.F.R. § 1.136(a)). The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 210765.

Respectfully submitted,

/Stephen S. Roche/

SIGNATURE OF PRACTITIONER

Stephen S. Roche, Reg. No. 52,176

Setter Roche LLP

Telephone: (720) 562-2280

E-mail: steve@setterroche.com

Correspondence address:

CUSTOMER NO. 28004

Attn: Melissa A. Jobe

Sprint Law Department

6450 Sprint Parkway

Mailstop: KSOPHN0312-3A461

Overland Park, KS 66251